

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

KENNETH PITTS,

Plaintiff,

v.

No. 1:23-cv-00120-SCY

SAN JUAN COLLEGE,

Defendant.

**MEMORANDUM OPINION AND ORDER  
GRANTING MOTION TO STAY PENDING APPEAL AND  
GRANTING MOTION FOR LEAVE TO FILE ELECTRONICALLY**

Plaintiff, who is proceeding *pro se*, filed a Complaint against Defendant in the United States District Court for the District of Massachusetts. *See* Doc. 1, filed July 1, 2022. The United States District Court for the District of Massachusetts transferred the case to the District of New Mexico. *See* Doc. 28, filed February 9, 2023.

**Motion to Stay Pending Appeal**

Defendant asks the Court to stay this case stating:

On February 17, 2023 [*after* the United States District Court for the District of Massachusetts transferred this case to the District of New Mexico], Plaintiff filed a Notice of Appeal in Massachusetts, seeking the First Circuit Court of Appeals' review of the Massachusetts district court's Order transferring the case to New Mexico ... and the First Circuit accepted the appeal.

Defendant San Juan College's Motion to Stay Pending Appeal at 1-2, ¶4, Doc. 32, filed February 23, 2023. Defendant asks the Court to stay this case pending resolution of Plaintiff's appeal in the First Circuit to "prevent further jurisdictional issues and the potential for litigation in two courts." *See* Motion to Stay at 2.

In his Response, Plaintiff states he has appealed the District of Massachusetts' decision to transfer this case to the District of New Mexico<sup>1</sup> and "hope[s] that this Court] will also review the Prima Facie evidence provided from my Massachusetts Appeal as part of this Opposition to the Defendant's Stay Motion prior to a possible granting of the requested Stay Motion." Plaintiff['s] Opposition to Defendant San Juan College's Motion to Stay Pending Appeal and Prima Facie Evidence at 1, Doc. 34, filed March 9, 2023 ("Response").<sup>2</sup> Plaintiff's Response discusses facts relevant to his Complaint and "requests that this Court deny the Defendant San Juan College's Stay Motion until the Honorable Judge Steven C. Yarbrough has reviewed the information and rendered a decision pursuant [to] 28 U.S.C. 1915 regarding this case being heard in New Mexico." Response at 4-5.

The Court grants Defendant's Motion to Stay proceedings pending resolution of Plaintiff's appeal in the First Circuit. *See Baca v. Berry*, 806 F.3d 1262, 1269-70 (10th Cir. 2015) (stating "[i]t is well settled that the district court has the power to stay proceedings pending before it and to control its docket for the purpose of economy of time and effort for itself, for counsel, and for

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<sup>1</sup> Defendant filed a copy of an order of the United States Court of Appeals for the First Circuit which states:

Because the order appealed from does not appear to be a final judgment or an appealable interlocutory order, this court does not appear to have jurisdiction to consider this appeal ... Accordingly, appellant is ordered either to move for voluntary dismissal of the appeal ... or to show cause, in writing, why the appeal should not be dismissed for lack of jurisdiction."

Reply, Exhibit A, Doc. 36-1, filed March 20, 2023. Defendant states "Plaintiff has not voluntarily dismissed his appeal and is instead continuing to pursue the merits of his appeal with the First Circuit." Reply at 2-3, Doc. 36, filed March 20, 2023 (attaching as Exhibit B Plaintiff's response to the First Circuit's order).

<sup>2</sup> Plaintiff also filed a Response on March 15, 2023, which appears to be identical to his original Response. See Doc. 35, filed March 15 (signature lines of the original Response and the second Response are both "Dated: March 8, 2023").

litigants”). Plaintiff has not shown that this Court has jurisdiction over his claims while the issue of whether the District of Massachusetts erred in transferring this case to the District of New Mexico is pending on appeal in the First Circuit. Nor has Plaintiff shown that he will be prejudiced by a stay of proceedings in this Court pending the resolution of his appeal.

### **Case Assignment**

In his response to the First Circuit’s order regarding jurisdiction over Plaintiff’s appeal, Plaintiff states:

Judge Yarbrough has been “assigned” for a 28 U.S.C. 1915 review for what I believe to be his opinion of whether my lawsuit is “frivolous or malicious”. The District of New Mexico court has no record of who “assigned” my case to Judge Yarbrough. I’m told by a New Mexico Court clerk that “it appears that he (Yarbrough) has selected or assigned this case to himself.”

Doc. 36-2 at 2.

The undersigned did not select or assign this case to himself. United States Magistrate Judges are randomly assigned to cases in the District of New Mexico. For cases where a *pro se* plaintiff is proceeding *in forma pauperis*, the Magistrate Judge reviews the case pursuant to 28 U.S.C. § 1915<sup>3</sup> which allows the Court to authorize commencement of a case without prepayment of the filing fee. For cases where a *pro se* plaintiff has paid the filing fee, the Magistrate Judge reviews the case pursuant to the Court’s inherent power to manage its docket.

*See Securities and Exchange Comm'n v. Management Solutions, Inc.*, 824 Fed.Appx. 550, 553

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<sup>3</sup> Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

- (A) the allegation of poverty is untrue; or
- (B) the action or appeal--
  - (i) is frivolous or malicious;
  - (ii) fails to state a claim on which relief may be granted; or
  - (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2).

(10th Cir. 2020) ("a district court has the inherent power 'to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases'"') (quoting *Dietz v. Bouldin*, 136 S. Ct. 1885, 1891-92 (2016)). Plaintiff has paid the filing fee in this case. *See* Doc. 4, filed July 6, 2022. Consequently, if this case proceeds in the District of New Mexico following the First Circuit's ruling on Plaintiff's appeal, the undersigned will review the case pursuant to the Court's inherent power to manage its docket.

### **Motion for Leave to File Electronically**

Plaintiff, who is proceeding *pro se*, seeks permission to file electronically in this case stating he has submitted a Non-Attorney E-File Registration with PACER and "understand[s] that I must regularly review the docket sheet of the case so that I does not miss a filing." Motion for Leave to Electronically File, Doc. 33, filed March 2, 2023.

The Court grants Plaintiff permission to file electronically in this case only. *See* Guide for Pro Se Litigants at 13, District of New Mexico (October 2022) ("approval to electronically file documents within a case must be granted by the presiding judge for each case in which the *pro se* litigant wishes to file using their CM/ECF account"). The Court will revoke permission to file electronically if Plaintiff abuses his electronic filing privilege or fails to comply with the rules and procedures in the District of New Mexico's Guide for Pro Se Litigants and the District of New Mexico's CM/ECF Administrative Procedures Manual. Account registration forms, procedure manuals, and other information can be obtained at the Court's website at <http://www.nmd.uscourts.gov/filing-information>. This Order only grants Plaintiff permission to participate in CM/ECF; Plaintiff is responsible for registering to become a participant. *See* CM/ECF Administrative Procedures Manual, District of New Mexico (Revised January 2021).

**IT IS ORDERED** that:

- (i) Defendant San Juan College's Motion to Stay Pending Appeal at 1-2, ¶ 4, Doc. 32, filed February 23, 2023, is **GRANTED**.
- (ii) Plaintiff's Motion for Leave to Electronically File, Doc. 33, filed March 2, 2023, is **GRANTED**.



Steve Yandarez  
UNITED STATES MAGISTRATE JUDGE